



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626

September 24, 2004

Ref: 8MO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Albert Peterson, Superintendent
Hardin Public Schools
Route 1, Box 1001
Hardin, Montana 59034-9707

Re: Findings of Violation and Administrative
Order for Compliance
Docket No. **CWA-08-2004-0069**

Dear Mr. Peterson:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that Hardin Public Schools is in violation of the Clean Water Act, as amended ("CWA"). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of dredged or fill material into waters of the United States. See, 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, you have discharged dredged material into waters of the United States without authorization under the CWA. These discharges of pollutants into wetlands have occurred on your property at a site located in Section 23, Township 1 South, Range 33 East, Big Horn County, Montana.

Enclosed is a document entitled "Findings of Violation and Administrative Order for Compliance" ("Order") which specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). Pursuant to the Order, within five days after you receive the Order, you must inform EPA in writing of your intent to fully comply with the Order.

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or



loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that failure to comply with the requirements of the Order is a violation of the Order and may be enforced through the mechanisms referenced above. Please also be advised that the issuance of this Order does not preclude civil or criminal actions in the U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the Order or for any other violations that Hardin Public Schools may have committed prior to or may commit after the issuance of the enclosed Order.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). SBREFA does not eliminate your responsibility to comply with the Act or this Order, nor does it create any new rights or defenses under law. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses.

Please review the Order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Enforcement Attorney, at 303-312-6637 and Kris Knutson, Enforcement Officer, at 406-457-5021.

Sincerely,

Aundrey C. Wilkins for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

1. Findings of Violation and Administrative Order for Compliance
2. SBREFA Information Sheet

cc: Allan Steinle, U.S. Army Corps of Engineers, w/enclosures
John Arrigo, DEQ, w/enclosures
Wendy Silver, 8ENF-L, w/enclosures
Kris Knutson, 8MO, w/enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	FINDINGS OF VIOLATION AND
)	ADMINISTRATIVE ORDER FOR
Hardin Public Schools)	COMPLIANCE
P.O. Box 1001)	
Hardin, MT 59034-9707)	
)	Docket No. CWA-08-2004-0069
)	
)	
Respondent.)	
_____)	

I. STATUTORY AUTHORITY

1. This Findings of Violation and Administrative Order for Compliance (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

2. Hardin Public Schools, hereafter “Respondent”, is a body corporate established under the laws of Montana with offices located in the City of Hardin, Montana.

3. At all relevant times, Respondent owned, controlled or operated property containing wetlands in certain areas. Said property and wetlands are located in Section 23, Township 1 South, Range 33 East, Hardin, Big Horn County, Montana, hereafter referred to as the “Site”. Schools and athletic facilities for Elementary District No. 17-H and High School District No. 1 are located at the Site.

4. On or around June 15, 2004, Respondent discharged or caused to be discharged, without prior authorization from the United States Army Corps of Engineers (“Corps”), fill material into a wetland at the Site. Approximately 0.07 acre of fill was placed in the wetland, consisting of soil, asphalt, concrete, and ash from the school’s coal fired boiler.

5. The wetlands at the Site are adjacent to the Two Leggins Canal, which flows into the Bighorn River. The Bighorn River flows into the Yellowstone River which is a navigable, interstate water.

6. In a letter dated April 29, 2004, to the Corps, Mr. Albert Peterson, Superintendent of Hardin Public Schools, requested permission to fill five (5) acres of wetlands at the Site to control mosquitoes. After subsequent discussions with the Corps pertaining to permitting and mitigation requirements, Mr. Peterson informed the Corps that the school Board had decided not to fill the wetlands but would employ other methods to control mosquitoes.

7. In a letter dated June 2, 2004, the Corps informed Mr. Peterson that no Section 404 permit would be required to burn the biomass in the wetland and apply BTI larvicide to control mosquitoes, provided there would be no placement of fill material into jurisdictional waters of the United States located at the Site.

8. On June 15, 2003, personnel from the Corps observed dump trucks dumping material into

wetlands in the vicinity of the high school athletic complex. The Corps determined that the Hardin Public Schools owned the wetlands, and that the fill material was coming from an ongoing construction project on school grounds. While there was adequate upland next to the wetland to accommodate the fill, the fill was being placed in piles on top of and along the east boundary of the wetland.

9. On June 17, 2004, the Corps sent a Cease and Desist order to Mr. Peterson.

10. By letter dated June 24, 2004, the Corps referred the case to EPA.

11. On June 24, 2004, Lou Hanebury of the U.S. Fish & Wildlife Service observed piles of fill material that had been dumped into and along the edge of the wetland, west of where the previous fill had been placed.

12. The activities described in paragraphs 4, 8 and 11 of Section II of this Order were performed using common earthmoving vehicles and equipment, including dump trucks, which were operated by Respondent and/or by one or more individuals on behalf of Respondent.

13. The wetland that was filled and disturbed by the actions of Respondent, as described in paragraphs 4, 8 and 11 of Section II of this Order, provides various functions and values, including wildlife habitat for songbirds, raptors, mammals, reptiles and amphibians; water quality enhancement; flood storage; and food chain support.

14. Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. The discharged fill materials described in paragraphs 4, 8 and 11 of Section II of this

Order are, and were at all relevant times, “fill material” within the meaning of 33 C.F.R. § 323.2(e) and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. The vehicles and equipment described in paragraph 12 of Section II of this Order are, and were at all relevant times, each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The impacted wetland was, at all relevant times, “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. The placement of fill material into the wetland as described in paragraphs 4, 8 and 11 of Section II of this Order constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

19. Section 301(a) of the CWA, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

20. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into waters of the United States.

21. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

22. Respondent is not and never has been authorized by a permit issued pursuant to section

404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 4, 8 and 11 of Section II of this Order.

23. Respondent's activities described in paragraphs 4, 8 and 11 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a).

24. The removal of the fill material illegally discharged into waters of the United States at the Site and restoration of the impacted waters to a condition that closely approximates their condition and function prior to the discharge of the fill material, can be achieved as a practical matter through commonly used methods of construction, digging, filling, revegetation, and best management practices.

25. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 24 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondent's unpermitted activities.

26. This Order was issued after consultation and coordination with the Corps' Omaha District, Helena Regulatory Office.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondent shall immediately terminate all discharges of dredged or fill material into waters of the United States, now and in the future, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all ditching, draining, mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

2. Within thirty (30) calendar days of the receipt of this Order, Respondent shall submit to EPA for review and approval a Restoration Plan for the removal of the discharged fill materials described in paragraphs 4, 8 and 11 of Section II of this Order, and restoration of the area impacted by the discharged fill. The Restoration Plan shall be prepared in accordance with “U.S. Environmental Protection Agency - Region VIII Section 404 Enforcement: General Guidelines for Removal and Restoration Plans,” attached hereto as Exhibit A. Additionally, the Restoration Plan shall:

a. Include a detailed work plan and schedule for all of the work to be accomplished by the Restoration Plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than November 19, 2004. The work plan shall, at a minimum, provide specific and detailed provisions for:

i. Removal of the discharged fill materials to upland areas in full compliance with and with prior approval of all Federal, State and local requirements, and providing a detailed description (including exact location) of the site to where the material will be relocated and proof that the owner of such site has approved the relocation of the discharged fill materials to such site; and

ii. Stabilization of any fill material which is placed adjacent to waters of the United States to prevent incidental movement of this material into such waters.

b. Be prepared by a qualified consultant experienced in stream and wetland restoration, include detailed professional drawings of the restoration site, and comply with all Federal, State, and local requirements.

3. EPA will review the Restoration Plan and approve it or reject it with comments. If EPA rejects the Restoration Plan, Respondent shall, within fifteen (15) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.

4. Upon receiving EPA's written approval of the Restoration Plan, Respondent shall obtain all necessary permits to implement the EPA-approved plan and then commence restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

5. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the following

address and telephone number to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA:

U.S. Army Corps of Engineers, Omaha District
Helena Regulatory Office
10 West Fifteenth Street, Suite 2200
Helena, Montana 59626
Telephone: (406) 441-1375

If required, Respondent shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 4 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

6. At least ten (10) calendar days prior to the anticipated completion of all restoration activities in accordance with the approved Restoration Plan, Respondent shall notify EPA so that EPA can arrange a final interagency inspection of the completed restoration activities.

7. Respondent shall submit three (3) copies of the Restoration Plan, all notifications, and related correspondence to:

Kristine Knutson
U.S. Environmental Protection Agency
10 West Fifteenth Street, Suite 3200
Helena, Montana 59626
Telephone: (406) 457-5021
Facsimile: (406) 457-5055

A copy of the restoration plan, all notifications, and related correspondence shall also be provided to:

Wendy Silver, 8ENF-L
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6637
Facsimile: 303-312-6953

8. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.

9. Respondent shall allow, or use its best effort to allow, access by any authorized representatives of EPA, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, the Soil Conservation Service, the Montana Department of Environmental Quality, the Montana Department of Fish, Wildlife and Parks and the Bighorn County Conservation District, or any of these agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

10. This Order shall be effective upon receipt. Within five (5) calendar days of receipt of this Order, Respondent shall inform EPA in writing of Respondent's intent to fully comply with the Order.

11. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by the Civil Monetary Penalty Inflation Adjustment Rule, 69 Federal Register 7121 (February 13,

2004), authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.

12. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of Respondent's obligations to comply with any applicable federal, state or local law. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the Clean Water Act, 33 U.S.C. section 1319, for violation of this Order.

IN THE MATTER OF: Hardin Public Schools

DATED this 23rd day of September, 2004.

Aundrey C. Wilkins for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Supplemental Information for Small Businesses Subject to a U.S. EPA Enforcement Action

The United States Environmental Protection Agency (EPA) offers small businesses a wide variety of compliance assistance resources and tools designed to assist businesses to comply with Federal and State environmental laws. These resources can help businesses understand their obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Websites

EPA offers a great deal of compliance assistance information and materials for small businesses on the following Websites, available through public libraries:

➡ www.epa.gov	<i>EPA's Home Page</i>
➡ www.smallbiz-enviroweb.org	<i>EPA's Small Business Home Page</i>
➡ www.smallbiz-enviroweb.org/state.html	<i>List of State Contacts</i>
➡ www.epa.gov/ttn/sbap	<i>Small Business Assistance Programs</i>
➡ www.epa.gov/oeca/polguid.html	<i>Enforcement Policy and Guidance</i>
➡ www.epa.gov/oeca/smbusi.html	<i>Small Business Policy</i>
➡ www.epa.gov/oeca/oc	<i>Compliance Assistance Home Page</i>
➡ www.epa.gov/oeca/ccsmd/commpull.html	<i>Small Businesses and Commercial Services</i>
➡ www.epa.gov/oeca/ccsmd/mun.html	<i>Small Communities Policy</i>

Hotlines

EPA sponsors approximately 89 hotlines and clearinghouses that provide a free and convenient avenue to obtain assistance with environmental requirements. The Small Business Ombudsman Hotline can provide you with a list of all the hotlines and assist you with determining which hotline will best meet your needs. Key hotlines that may be of interest to you include:

➡ Small Business Ombudsman.....	(800) 368-5888
➡ RCRA/UST/CERCLA Hotline.....	(800) 424-9346
➡ Toxic Substances and Asbestos Information.....	(202) 554-1404
➡ Safe Drinking Water.....	(800) 426-4791
➡ Stratospheric Ozone/CFC Information.....	(800) 296-1996
➡ Clean Air Technical Center.....	(919) 541-0800
➡ Wetlands Hotline.....	(800) 832-7828

Compliance Assistance Centers

EPA has established national compliance assistance centers, in partnership with industry, academic institutions, and other federal and state agencies, that provide on line and fax back assistance services in the following sectors heavily populated with small businesses:

- ➡ Metal Finishing (www.nmfrc.org)
- ➡ Printing (1-888-USPNEAC or www.pneac.org)
- ➡ Automotive (1-888-GRN-LINK or www.ccar-greenlink.org)

- ➡ Agriculture (1-888-633-2155 or www.epa.gov/oeca/ag)
- ➡ Printed Wiring Board Manufacturing (www.pwbrc.org)
- ➡ The Chemical Industry (Contact: Emily Chow 202-564-7071)
- ➡ The Transportation Industry (<http://www.epa.gov/oeca/tcac/tcac.html>)
- ➡ The Paints and Coatings Center (Contact: Scott Throwe 202-564-7013)
- ➡ Local Governments (Contact: John Dombrowski, 202-564-7036)

State Agencies Many state agencies have established compliance assistance programs that provide on-site as well as other types of assistance. Please contact your local state environmental agency for more information. EPA's Small Business Ombudsman can provide you with State Agency contacts by calling (800)-368-5888.

Compliance Incentive Policies EPA's Small Business Policy and Small Communities Policy are intended to promote environmental compliance among small businesses by providing incentives such as penalty waivers and reductions for participation in compliance assistance programs, and encouraging voluntary disclosure and prompt correction of violations. These policies can not be applied to an enforcement action such as this one that has already been initiated, but are noted for future reference. Contact Karin Leff (202-564-7068) for information on the Small Business Policy and Ken Harmon (202-564-7049) for information on the Small Communities Policy.

In order to improve your understanding of and compliance with environmental regulations and avoid the need for future enforcement actions, we encourage you to take advantage of these tools. ***However, please note that any decision to seek compliance assistance at this time does not relieve you of your obligation to answer EPA's administrative complaint in a timely manner, does not create any new rights or defenses, and will not affect EPA's decision to pursue this enforcement action.***

The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your SIC designation, number of employees or annual receipts) and wish to comment on federal enforcement and compliance activities, call 1-888-REG-FAIR (1-888-734-3247). ***However, participation in this program does not relieve you of your obligation to respond to an EPA request, administrative or civil complaint or other enforcement action in a timely manner nor create any new rights or defenses under law. In order to preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.***

Dissemination of this information sheet does not constitute an admission or determination by EPA that your business, organization, or governmental jurisdiction is a small entity as defined by SBREFA or related provisions nor does it create any new rights or defenses under law.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 24, 2004.